

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.:	10/811,412	Confirmation No.	3274
Applicant:	WALKER, William T.		
Filed:	March 25, 2004	TC/A.U.:	3661
Docket No.:	4366-148		
Customer No.:	22442	Examiner	Arthur Jeanglaud, G.
For:	"GLOBAL POSITIONING SYSTEM HARDWARE KEY FOR SOFTWARE LICENSES"		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Appellants respectfully request reconsideration and withdrawal of the outstanding Final Office Action on the above-identified application based on the following remarks.

Independent Claim 1 recites, *inter alia*, determining a geographic location of a key device in communication with and physically separate from the computational component, the key device containing a location module for determining wirelessly geographic location relative to a selected coordinate system, comparing the determined geographic location with at least one predetermined permitted geographic location permitted by a license and when the determined geographic location is not a permitted geographic location under the license, determining that use of the computational component is not permitted.

Independent Claim 12 recites, *inter alia*, a locating module to determine, wirelessly, a geographic location relative to a selected coordinate system of a key device containing the module, the key device being physically separate from and in communication with the computational component and a validation agent operable to (a) compare the determined geographic location with at least one predetermined permitted geographic location permitted by the license and (b) when the determined geographic location is not a permitted geographic location under the license, determine that the computational component is not validly licensed.

Independent Claim 23 recites, *inter alia*, providing a key device to validate the license when in communication with the computational component, the key device being physically separate from and connected to the computational component, a licensing validation agent in the computational component determining whether the key device is local to the computational component and when the key device is not local to the computational component, the licensing validation agent in the computational component determining that the computational component is not validly licensed.

As discussed during prosecution, there is absolutely no teaching or suggestion in Wall of the use of an *external* dongle containing a location (e.g., GPS) module in license verification (see claims 1, 12 and 23) and the determination whether the dongle is “local” to the licensed computational component to prevent remote use of the dongle within the predetermined geographic parameters (as part of a distributed processing network) to license a component located outside the permitted geographic parameters (claim 23). As discussed at least on pages 10-11 of Appellants specification, local is defined in terms of the dongle’s proximity and/or accessibility to the computational component.

The Final Office Action asserts that “the Wall prior art discloses at paragraph 0030 an interface that can act as a dongle between the receiver and computers and also discloses license verification in paragraph 31.”

For the Panel’s convenience, paragraphs 0030 and 0031 of Wall are reproduced below.

[0030] A preferred embodiment of a system in accordance with the present invention for software control provides for an interface between a GPS receiver and computers/controllers using specific software. At time of purchase, (or as part of a preset shipment) position (or location) data is entered, which specifies the reference location and the permissible limits (in three dimensions and time) over which the software may be used. Delineation may be provided at the time of purchase or contract (if required by the manufacturer), by allowing the users to enter data on their address from the web. The receiver is provided with an interface, which provides current position (or location) data to the computer along with any other data deemed necessary for security, e.g., the specific satellites from

which the data was derived. The software package makes a comparison between current position (or location) and area of operability and either allows operation directly or sets a license interval during which the process must be repeated to extend the license.

[0031] In accordance with an embodiment of the invention, position (or location) data may be compared against the preset position (or location) as entered by the controlling authority. The position (or location) may be defined three dimensionally, incorporating altitude, and additional restraints of time may be included. Satellite ephemeris data coupled with time adds security by comparing the satellites used for position (or location) and time against those predicted by ephemeris data preloaded into the control mechanism. Additional levels of security may be added using a variety of techniques, many of which will be detailed below. The license to use is then effected by providing the position (or location) data as a critical element of a secure code for access, the same position (or location) data having been used to generate a secure code protecting the device at the controlling entity.

Appellants respectfully submit that no reasonable interpretation of either of these paragraphs, nor any other portion of Wall, would lead one to conclude that Wall teaches or suggests claimed key device.

The Final Office Action asserts that “a dongle is a mechanism for ensuring that only authorized users can copy or use specific software applications, especially very expensive programs. Common mechanisms include a hardware key that plugs into a parallel or serial port on a computer and that a software application accesses for verification before continuing to run. It is therefore believed that Wall discloses such teachings.”

Appellants agree that a dongle can be used to ensure proper usage of software under a license. However, this in no way teaches or suggests a physically separate dongle being capable of wirelessly determining a geographic location relative to a selected coordinate system as recited

in, for example, claim 1, let alone being local to the computational component as recited in independent claim 23.

Wall and the SearchSMB.com dongle definition relied upon in the Final Office Action are completely devoid of any functionality, componentry or discussion of the claimed combination of features.

Moreover, Wall and the SearchSMB.com dongle definition fail to even recognize the work-arounds software pirates employ to circumvent standard dongle security let alone address the need to combat these circumventions.

At least based on the above lack of teachings in the cited references, Appellants respectfully submit that the outstanding rejection is untenable and should be withdrawn.

The dependent claims provide further reasons for allowance.

By way of nonlimiting example, dependent Claims 7, 18, and 29 recite a licensing validation agent in the computational component to determine whether the key device is in communication with the computational component; when the key device is not in communication with the computational component, to determine that the computational component is not validly licensed; and, when the key device is in communication with the computational component, to determine that the computational component is validly licensed.

Dependent Claims 8, 19, and 30 recite a permitted use to be defined by a license and the further steps of the licensing validation agent in the computational component authenticating the key device; and when the key device is not authenticated successfully, the licensing validation agent in the computational component determining that the computational component is not validly licensed. Wall fails to teach authentication of an external locating device, such as a dongle, using a unique identifier.

With all claims being clearly patentably distinguishable from the relied upon reference, Appellants respectfully request the application be promptly passed to issue.

The accompanying Notice of Appeal is believed to be timely and no additional fee is believed to be required. However, please credit any overpayment or debit any underpayment to Deposit Account 19-1970. If an extension is required such extension is hereby petitioned.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: _____

Jason H. Vick
Registration No. 45,285
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

Date: 17 Nov '06